

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,043

IN THE MATTER OF:

Served June 10, 2009

DEPENDABLE MEDICAL TRANSPORT INC.,)
Suspension and Investigation of)
Revocation of Certificate No. 533)

Case No. MP-2008-235

This matter is before the Commission on respondent's response to Order No. 11,881, served March 11, 2009, which directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent and/or suspend or revoke Certificate No. 533.

I. BACKGROUND

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 533 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 533 was rendered invalid on October 25, 2008, when the \$500,000 excess WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 11,647, served October 27, 2008, noted the automatic suspension of Certificate No. 533 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 533, and gave respondent thirty days to replace the terminated endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 533.

Respondent subsequently submitted an acceptable \$1.5 million primary WMATC Insurance Endorsement and paid the \$50 late fee, but because the effective date of the replacement endorsement is December 17, 2008, instead of October 25, 2008, Order No. 11,748, served December 11, 2008, directed respondent to verify cessation of operations as of October 25, 2008, and submit copies of corroborating business records in accordance with Regulation No. 58-14.

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

Because Commission records indicate that respondent transports passengers under the Medicaid Transportation Program of Montgomery County, Maryland, Order No. 11,748, also directed respondent to submit a written confirmation from an appropriate official of the Montgomery County Medicaid Program indicating whether respondent ceased operating under that program as of October 25, 2008.³

Respondent complied with Order No. 11,748 by filing the statement of its president, Lawrence Ambam, and submitting copies of its pertinent business records on January 14. Mr. Ambam acknowledged receiving the Commission's cease and desist order on or before November 21 but did not address whether respondent continued operating on and after October 25, 2008, and did not address whether respondent continued operating on and after November 21, 2008. Respondent's reservation records, however, confirm that respondent continued operating after October 25 and after November 21.

Later, on February 9, the Commission received a letter from the Medicaid Operations Manager of the Montgomery County Department of Transportation stating that respondent "submitted invoices for non-emergency wheelchair van services rendered to Medicaid transportation patients, through December 20, 2008, on behalf of the Montgomery County Medicaid Transportation Program."

Order No. 11,881 accordingly directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent and/or suspend or revoke Certificate No. 533. By then, the suspension of Certificate No. 533 had been lifted in Order No. 11,829, effective February 9, 2009, on the strength of respondent having reestablished compliance with Regulation No. 58.

II. RESPONSE TO ORDER NO. 11,881

In response to Order No. 11,881, respondent's president maintains he was not aware that respondent's policy had been canceled until he received Order No. 11,647. The cancellation notice received by the Commission on September 25, 2008, however, states the cause for cancellation was nonpayment of premium. Respondent cannot cease making required premium payments and then two months later claim to be surprised that the policy has been canceled as a result. Moreover, respondent still has not addressed its failure to cease operating after receiving Order No. 11,647.

IV. FINDINGS, ASSESSMENT OF FORFEITURE AND REVOCATION

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a

³ Order No. 11,748, also directed respondent to file a Montgomery County Medicaid contract tariff. Respondent submitted a contract tariff on January 14, 2009, but the tariff was rejected because there was no signature for Montgomery County on the copy of the contract submitted by respondent. Respondent has yet to resubmit a corrected copy.

civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.⁴ Each day of the violation constitutes a separate violation.⁵ The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.⁶

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁷ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard whether or not one has the right so to act.⁸ Continuing to operate in the face of a cease-and-desist order is the epitome of knowing and willful conduct.⁹

We find that respondent has failed to show cause why the Commission should not assess a civil forfeiture. Consequently, we shall assess a forfeiture against respondent in the amount of \$250 per day¹⁰ for eleven days,¹¹ or \$2,750. We will suspend all but \$750 in recognition of respondent's production of inculpatory records.¹² Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$2,750.

As for revocation, when the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate a certificate of authority. They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact.¹³ Further, this is not the first time respondent has violated the Commission's insurance requirements.

⁴ Compact, tit. II, art. XIII, § 6(f)(i).

⁵ Compact, tit. II, art. XIII, § 6(f)(ii).

⁶ Compact, tit. II, art. XI, § 10(c).

⁷ *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-07-070, Order No. 10,882 (Nov. 2, 2007); *In re Handi-Pro Transp., Inc.*, No. MP-07-060, Order No. 10,817 (Oct. 10, 2007); *In re Sydney Shuttle, LLC*, No. MP-07-064, Order No. 10,792 (Sept. 28, 2007).

⁸ Order Nos. 10,882; 10,817; 10,792.

⁹ Order No. 10,792.

¹⁰ See *In re Yai Med. Transp., L.L.C.*, No. MP-05-09; Order No. 8845 (July 22, 2005) (same).

¹¹ Respondent's reservation records show trips on Oct. 25, 27-31; Nov. 4-7, 10-12, 14, 25-26; Dec. 1-5, 8-11. Eleven of these occurred after November 21.

¹² See 10,792 (suspending 67% of forfeiture where carrier produced inculpatory records); *In re Malek Invest., Inc., t/a Montgomery Airport Shuttle, & Malek Invest. of Va., Inc., & Assadollah Malekzadeh*, No. MP-98-53, Order No. 5707 (Sept. 22, 1999) (suspending 70% of forfeiture where carrier produced inculpatory records).

¹³ Order Nos. 10,882; 10,817; 8845.

Respondent was suspended for insurance infractions once before.¹⁴ Against this backdrop, and considering that respondent operated not only while suspended but while uninsured, we shall revoke Certificate No. 533.¹⁵

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$2,750 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and Order No. 11,647; provided, that all but \$750 shall be suspended in recognition of respondent's production of inculpatory records.

2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of seven hundred fifty dollars (\$750).


3. That the full forfeiture of \$2,750 assessed in this order shall be immediately due and payable if respondent fails to timely pay the net forfeiture of \$750.

4. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 533 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact, Regulation No. 58, and Order No. 11,647.

5. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 533 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director

¹⁴ *In re Dependable Med. Transp. Inc.*, No. MP-04-198, Order No. 8376 (Oct. 28, 2004).

¹⁵ See Order No. 10,882 (revoked for operating while underinsured); Order No. 10,817 (revoked for operating while uninsured); Order No. 8845 (revoked for operating while uninsured).